IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 9107 of 2005(H)

I.A.2341/04 IN OS.691/1986 of MUNSIFF'S COURT, ALATHUR

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PETITIONER:

VELUSHEKHARAN, MATTUPARAMBIL,
PERUMTHURUTHU MURI, KANJIKUZHI VILLAGE,
CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.

RESPONDENT:

KARTHYAYANI KAMALAMMA,
PAPPUPARAMBIL, KODAKKARAPPALLY MURI,
VAYALAR MEKKU VILLAGE.

BY ADV. SRI.K.P.VIJAYAN
SMT.P.F.ROSY
SRI.V.M.SYAM KUMAR
SMT.C.B.SUMA DEVI
SRI.SURESH SAMUEL
SMT.KRIPA ELIZABETH MATHEWS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.9107/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE PHOTOCOPY OF ORDER DT.8.12.04 OF PRL.MUNSIFF, CHERTHALA IN I.A. 2341/04 IN O.S.691/86

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.9107 OF 2005

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DATED THIS THE 25TH JUNE, 2007

J U D G M E N T

Ext.P1 order dismissing an application filed by the plaintiff in a suit for mandatory injunction is under challenge in this Writ Petition under Article 227 of the Constitution.

2. Heard Sri.G.Ram Mohan, counsel for the petitioner and Sri.K.P.Vijayan, counsel for the respondent.

3. Even though it cannot be said that Ext.P1 order of the learned Munsiff is vitiated to such an extent as to warrant immediate correction under the supervisory jurisdiction of this Court under Article 227 of the Constitution, it has to be noticed that the dismissal of the amendment application will work out serious prejudice to the plaintiff-petitioner. The plaintiff is not to blame fully for the delay which has been caused in the matter. The learned Munsiff apprehends that it is likely that the plaintiff will once again seek an amendment of the plaint if another commissioner reports in future that the extent of the property allegedly enclosed by the respondent is more or less than 6.177 cents. The above apprehension, according to me, is not warranted. Having regard to the principles to be kept in mind while exercising powers of amendment under Order VI Rule 17 C.P.C., I am

of the view that the application should have been allowed by the learned Munsiff, of course, imposing terms on the petitioner.

4. Ext.P1 order will stand set aside and I.A.No.2341 of 2004 will stand allowed on condition that the petitioner pays to the respondent either directly or through her counsel in this Court, a sum of Rs.1500/- by way of costs and also pays to the High Court Legal Services Committee a sum of Rs.500/- by way of additional costs within a period of one month of receiving copy of this judgment. If cost is paid as above, the order setting aside Ext.P1 will become operative in which case the court below shall grant sufficient opportunity to the respondent for filing additional written statement in the case. If cost is not paid, Ext.P1 will stand confirmed and the Writ Petition will stand dismissed.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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